

Calendar No. 221

100TH CONGRESS
1st Session

SENATE

REPORT
100-95

ELIGIBILITY FOR CITIZENSHIP IN THE NORTHERN MARIANA ISLANDS

JULY 1 (legislative day, JUNE 23), 1987.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural
Resources, submitted the following

REPORT

[To accompany S. 1047]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1047) to modify section 301 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and for other purposes, having considered the same, reports favorably thereon with an amendment to the text and an amendment to the title and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. Strike out all after the enacting clause and insert in lieu thereof the following:

That the Joint Resolution of March 24, 1976 (Public Law 94-241, 90 Stat. 263) "To approve the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" be further amended by adding (effective November 3, 1986) the following new section at the end thereof:

"SEC. 6. (a) The phrase 'citizen of the Trust territory' in section 301 of the above referenced Covenant includes a person born in the Trust Territory who has or had one parent born in the Trust Territory.

"(b) The phrase 'who on that date do not owe allegiance to any foreign state' in section 301 of the Covenant means that such persons have affirmed under oath that they do not consider themselves to have owed allegiance to any foreign state on November 3, 1986. In the case of children under 13 years of age, the affirmation under oath may be given by a parent, guardian, or person *in loco parentis*.

"(c) The reference to 'all persons' in said section 301 of the Covenant shall be construed to refer to any person and his or her child or children."

2. Amend the title so as to read:

A bill to amend Public Law 94-241, the Joint Resolution approving the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and for other purposes.

PURPOSE

The purpose of S. 1047, as reported, is the same as that of S. 1047, as introduced, to clarify section 301 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States with regard to the class of persons eligible to become citizens of the United States.

BACKGROUND AND NEED

On November 3, 1986, the President issued Proclamation 5564 bringing into full force and effect the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved by Public Law 94-241, 90 Stat. 263) and the Compact of Free Association with the Republic of the Marshall Islands and the Federated States of Micronesia (approved by Public Law 99-239, 90 Stat. 1770). Pursuant to section 1002 of Public Law 94-241 and sections 101 (a) and (b) of Public Law 99-239 and consistent with the intent of Congress, the President has brought about the termination of the Trusteeship with respect to these three areas and extended United States sovereignty over the Northern Mariana Islands and formal recognition of the Republic of the Marshall Islands and the Federated States of Micronesia as sovereign self-governing nations in free association with the United States. The sole remaining area subject to the Trusteeship is the Republic of Palau which has not as yet completed its internal approval of a Compact of Free Association (approved by Public Law 99-564, 100 Stat. 3672).

The need for this legislation arises because section 301 of the Covenant defines those persons who, upon the effective date of the Covenant, become citizens of the United States. Following the effective date of November 3, 1986, many persons who assumed that they would become citizens pursuant to section 301 learned that they were ineligible for such citizenship. The reason for this is that the Administration interpreted the phrases "citizen of the Trust Territory", "who on that date do not owe allegiance to any foreign state", and "all persons" in section 301 differently than they are interpreted by persons in the CNMI, including those persons who represented the CNMI in the negotiations on the Covenant.

For example, with regard to the phrase "who on that date do not owe allegiance to any foreign state", the Administration has taken the position that many persons seeking citizenship under section 301 owe allegiance to a foreign state as a result of having acquired citizenship of that state from a parent. Moreover, the Administration holds the view that renouncing such citizenship, for the purpose of gaining U.S. citizenship under section 301, would have had to occur before the November 3, 1986, effective date. Unfortunately, many persons were unaware of their acquired citizenship prior to the effective date and were therefore, unaware of any need to renounce their acquired citizenship.

The effect of these interpretations is that an estimated 1,000 to 5,000 persons in the CNMI who anticipated gaining U.S. citizenship were determined to be ineligible for such citizenship. In response to this situation the CNMI requested expeditious action by the U.S. Government to restore citizenship eligibility to those persons who

were no longer eligible as a result of these interpretations. Expedient action was requested because, following termination of the Trusteeship with respect to the CNMI, U.S. citizenship is now required to establish voting rights in the CNMI and elections are scheduled for this November. Although the CNMI believes it would prevail in litigation, such relief would likely not occur prior to the elections.

LEGISLATIVE HISTORY

S. 1047 was introduced on April 21, 1987, by Senator Johnston by request of the Administration.

A hearing was held on May 5, 1987 before the House Subcommittee on Insular and International Affairs on the House companion measure, H.R. 2234. At that hearing, U.S. and CNMI representatives agreed to develop an amendment to H.R. 2234 to resolve remaining issues.—

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session of June 25, 1987, by unanimous vote of a quorum present, recommends that the Senate pass S. 1047, if amended, as described herein.

The rollcall vote on reporting the measure was 18 yeas, 0 nays as follows:

YEAS

Mr. Johnston
Mr. Bumpers
Mr. Ford
Mr. Metzenbaum*
Mr. Bradley*
Mr. Bingaman
Mr. Wirth
Mr. Fowler
Mr. Conrad*
Mr. McClure*
Mr. Hatfield*
Mr. Weicker*
Mr. Domenici
Mr. Wallop
Mr. Murkowski
Mr. Nickles*
Mr. Hecht
Mr. Evans

NAYS }

* Indicates vote by proxy.

COMMITTEE AMENDMENTS

The Committee ordered S. 1047 reported with two amendments; the first to amend Public Law 94-241, the joint resolution which approved the Mariana Covenant, and the second to alter the title.

The purpose and intent of the first amendment is the same as the original text of S. 1047. However, instead of directly amending section 301 of the Covenant, the amendment would be to Public

Law 94-241. Representatives of the CNMI objected to directly amending the Covenant because, in their view, the current language of section 301, when considered with the negotiating history, is unambiguous. They were willing, however, to agree to "interpretive" language amending the joint resolution approving the Covenant because this approach would, in their view, not alter the Covenant nor its intent. The Administration concurs.

Proposed section 6(a) clarifies that persons born in the Trust Territory of the Pacific Islands who have at least one parent born in the Trust Territory are to be considered citizens of the Trust Territory of the Pacific Islands for the purposes of applying section 301 of the Covenant.

Proposed section 6(b) makes clear that a person who might have a claim to foreign citizenship through ancestry or otherwise need not renounce that citizenship in a manner effective under the laws of that foreign country. Instead, this section contemplates the use of an oath affirming that the person does not consider themselves to have owed allegiance to that foreign state on November 3, 1986. The use of an oath to disavow allegiance to a foreign state is fully consistent with U.S. naturalization law and the practices followed in issuing Trust Territory passports. This oath could be taken as part of a voter registration procedure, in an affidavit-type form, or through other such similar mechanisms that may be adopted by the Commonwealth or the U.S. Government. This section also contemplates that U.S. passport applications of CNMI inhabitants will require an affirmation that applicants do not consider themselves to have owed allegiance to any foreign state on November 3, 1986, and that such applications, or other means of affirming U.S. citizenship, will contain an appropriate box to be marked with regard to this affirmation.

Finally, the Committee intends that a parent, guardian or person *in loco parentis* will be expected to complete this affirmation on behalf of children under 13 years of age. This second intention of the Committee is included in the amendment and was not in S. 1047 as introduced. Although this procedure is required by current regulations regarding the treatment of children under 13 years of age (Title 22 C.F.R. 51.27), its restatement in the law provides administrative convenience.

Proposed section 6(c) clarifies that a child under the age of 18 years on November 3, 1986, is entitled to United States citizenship, so long as one parent qualifies for such citizenship under section 301 of the Covenant. Under this subsection, such a child qualifies under section 301 of the Covenant even though the child may have acquired a foreign nationality by birth in a foreign nation or otherwise.

COST AND BUDGETARY CONSIDERATIONS

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 1, 1987.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1047, a bill to amend Public Law 94-241, the Joint Resolution approving the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and for other purposes, as ordered reported by the Senate Committee on Energy and Natural Resources, June 25, 1987.

We estimate that enactment of this bill would result in no cost to the federal government, and in no cost to state or local governments. The bill would amend Public Law 94-241 to clarify which citizens of the Trust Territory are eligible to become citizens of the United States.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

JAMES BLUM
(For Edward M. Gramlich, Acting Director).

REGULATORY IMPACT EVALUATION

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

This legislation would not impose any additional Government standards or significant economic responsibilities on private individuals or businesses.

This measure does impact on personal privacy to the extent that persons who seek to become citizens of the United States under the terms of section 301 of the Mariana Covenant may have to demonstrate their eligibility for such citizenship through the presentation of private documents.

EXECUTIVE COMMUNICATIONS

The pertinent legislative reports and communications received by the Committee from the Department of the Interior setting forth executive agency recommendations relating to S. 1047 are set forth below.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, March 25, 1987.

Hon. GEORGE BUSH,
President of the United States Senate,
Washington, DC.

DEAR MR. PRESIDENT: Enclosed is a draft bill "To modify section 301 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of

America, and for other purposes." The Covenant was approved with the signing of Public Law 94-241 on March 24, 1976.

We recommend that the bill be introduced, referred to the appropriate committee for consideration, and enacted.

It was generally assumed by those who drafted the Covenant and those who voted in the related 1975 Northern Mariana Islands plebiscite that pursuant to Covenant section 301 (text enclosed) virtually all persons born in the Northern Mariana Islands who were citizens of the Trust Territory, or citizens of the Trust Territory of the Pacific Islands who had resided in the Northern Mariana Islands for five years would qualify for United States passports upon termination of the trusteeship agreement with the United Nations.

It was understood at that time that the exception in section 301, relating to persons who owe allegiance to any foreign state, would not affect any persons other than those who had taken affirmative steps to acquire or preserve a foreign nationality. The draftsmen of the Covenant apparently were also unaware of section 1 of title 53 of the Trust Territory Code denying Trust Territory citizenship to persons who at birth acquired another nationality.

After the termination of the Trusteeship Agreement, when inhabitants of the Commonwealth of the Northern Mariana Islands applied for United States passports, it appeared unexpectedly that a substantial number of inhabitants of the Trust Territory had married citizens of foreign countries. Pursuant to the nationality laws of a number of these foreign countries, the children of these marriages acquired the citizenship of such foreign country at birth. Those children, accordingly, were and are not entitled to United States passports under Covenant section 301, because they owe allegiance to another nation, and because, having acquired a foreign nationality at birth, they are not citizens of the Trust Territory. It is estimated that this complication affects 1000 to possibly 5000 persons, a substantial percentage of the Commonwealth's population.

The attached draft bill would remedy this problem by adding to Covenant section 301 a new paragraph specifically stating that a person born in the Trust Territory will be considered a citizen of the Trust Territory not owing allegiance to a foreign state if (1) such person has one parent who was born in the Trust Territory, and (2) such person has not taken affirmative steps to acquire or affirm foreign nationality after his or her eighteenth birthday.

This modification would have the effect of entitling to United States passports all persons born prior to the termination of the trusteeship in the Northern Mariana Islands, and those born in Micronesia who complied with the requirements of section 301(b), even if they had acquired a foreign nationality at birth, as long as such persons did not take any affirmative step to acquire or preserve a foreign nationality after his or her eighteenth birthday. The bill would also correct the problem presented by section 1 of title 53 of the Trust Territory Code. This proposal would not affect the other requirements of section 301.

It should be noted that under Covenant section 303, a person born in the Commonwealth of the Northern Mariana Islands after the termination of the trusteeship is entitled to the benefits of section 301, even if only one parent qualifies for those benefits.

Section 2 is designed to clarify a potential misunderstanding by stating specifically that children under the age of 18 years are entitled to a United States passport, even if only one parent qualifies for such a passport under Covenant section 301.

The Office of Management and Budget has advised that there is no objection to the submission of this proposal from the standpoint of the Administration's program.

Sincerely,

RICK MONTOYA,
Assistant Secretary.

Enclosures.

A BILL To modify section 301 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and for other purposes.

Be it Enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 301 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, approved in Public Law 94-241 (90 Stat. 263), is amended (effective November 3, 1986) by adding at the end of such section (without numerical designation) the following language:

"For the purposes of this section, a person who was born in the Trust Territory of the Pacific Islands (Trust Territory) is considered to have been a citizen of the Trust Territory on November 3, 1986, and not to owe allegiance to a foreign state, if (1) one parent of such person was born in the Trust Territory, and (2) such person took no affirmative steps to acquire or preserve foreign nationality after his or her eighteenth birthday."

SEC. 2. The reference to "all persons" in section 301 of the Covenant referred to in section 1 of this Act shall be construed to refer to any person and his or her child.

COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA

SECTION 301. The following persons and their children under the age of 18 years on the effective date of this Section, who are not citizens or nationals of the United States under any other provision of law, and who on that date do not owe allegiance to any foreign state, are declared to be citizens of the United States, except as otherwise provided in Section 302:

"(a) all persons born in the Northern Mariana Islands who are citizens of the Trust Territory of the Pacific Islands on the day preceding the effective date of this Section, and who on that date are domiciled in the Northern Mariana Islands or in the United States or any territory or possession thereof;

"(b) all persons who are citizens of the Trust Territory of the Pacific Islands on the days preceding the effective date of this Section, who have been domiciled continuously in the Northern Mariana Islands for at least five years immediately prior to that date, and who, unless under age, registered to vote in elections for the Mariana Islands District Legislature or for any municipal election in the Northern Mariana Islands prior to January 1, 1975; and

"(c) all persons domiciled in the Northern Mariana Islands on the day preceding the effective date of this Section, who, although not citizens of the Trust Territory of the Pacific Islands, on that date have been domiciled continuously in the Northern Mariana Islands beginning prior to January 1, 1974.

CHANGES TO EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, S. 1047, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA

Pub. L. 94-241, Mar. 24, 1976, 90 Stat. 263, as amended by Pub. L. 98-213, § 9, Dec. 8, 1983, 97 Stat. 1461; Pub. L. 99-396, § 10, Aug. 27, 1986, 100 Stat. 840

CONGRESSIONAL APPROVAL OF COVENANT; SPECIAL REPRESENTATIVES

Whereas the United States is the administering authority of the Trust Territory of the Pacific Islands under the terms of the trusteeship agreement for the former Japanese-mandated islands entered into by the United States with the Security Council of the United Nations on April 2, 1947, and approved by the United States on July 18, 1947; and

Whereas the United States, in accordance with the trusteeship agreement and the Charter of the United Nations, has assumed the obligation to promote the development of the peoples of the trust territory toward self-government or independence as may be appropriate to the particular circumstances of the trust territory and its peoples and the freely expressed wishes of the peoples concerned; and

Whereas the United States, in response to the desires of the people of the Northern Mariana Islands clearly expressed over the past twenty years through public petition and referendum, and in response to its own obligations under the trusteeship agreement to promote self-determination, entered into political status negotiations with representatives of the people of the Northern Mariana Islands; and Whereas, on February 15, 1975, a "Covenant to Establish A Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" was signed by the Marianas Political Status Commission for the people of the Northern Mariana Islands and by the President's Personal Representative, Ambassador F. Haydn Williams for the United States of America, following which the covenant was approved by the unanimous vote of the Mariana Islands District Legislature on February 20, 1975 and by 78.8 per centum of the people of the Northern Mariana Islands voting in a plebiscite held on June 17, 1975: Now be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled. That the Covenant to Establish a Commonwealth of the Northern Mariana Islands in

Political Union with the United States of America, the text of which is as follows, is hereby approved.

COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA

* * * * *

Signed at Saipan, Mariana Islands on the fifteenth day of February, 1975.

For the people of the Northern Mariana Islands:

EDWARD DLG. PANGELINAN,
*Chairman, Marianas
Political Status Commission.*

VINCENTE N. SANTOS,
*Vice Chairman, Marianas
Political Status Commission.*

For the United States of America:

Ambassador F. HAYDN WILLIAMS,
*Personal Representative of
the President of the
United States.*

Members of the Marianas Political Status Commission:

JUAN LG. CABRERA.
VINCENTE T. CAMACHO.
JOSE R. CRUZ.
BERNARD V. HOFSCHEIDER.
BENJAMIN T. MANGLONA.
DANIEL T. MUNA.
DR. FRANCISCO T. PALACIOS.
JOAQUIN I. PANGELINAN.
MANUEL A. SABLAN.
JOANNES B. TAIMANAO.
PEDRO A. TENORIO.

SEC. 2. * * *

* * * * *

SEC. 6. (a) The phrase "citizen of the Trust territory" in section 301 of the above referenced Covenant includes a person born in the Trust Territory who has or had one parent born in the Trust Territory.

"(b) The phrase "who on that date do not owe allegiance to any foreign state" in section 301 of the covenant means that such persons have affirmed under oath that they do not consider themselves to have owed allegiance to any foreign state on November 3, 1986. In the case of children under 13 years of age, the affirmation under oath may be given by a parent, guardian, or person in loco parentis.

"(c) The reference to "all persons" in said section 301 of the Covenant shall be construed to refer to any person and his or her child or children.

* * * * *



MERCED RIVER, CALIFORNIA

JULY 1 (legislative day, JUNE 23), 1987.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 317]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 317) to amend the Wild and Scenic Rivers Act by designating a segment of the Merced River in California as a component of the National Wild and Scenic Rivers System, having considered the same, reports favorably thereon with an amendment to the text and recommends that the Act, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1271-1287), as amended, is further amended by inserting the following new paragraph:

"() MERCED, CALIFORNIA—The main river from its sources (including Red Peak Fork, Merced Peak Fork, Triple Peak Fork, and Lyell Fork) on the south side of Mount Lyell in Yosemite National Park to Lake McClure, consisting of approximately seventy-nine miles, and the South Fork of the River from its source near Triple Divide Peak in Yosemite National Park to the confluence with the main stem, consisting of approximately forty-three miles, both as generally depicted on the map entitled 'Merced River Wild and Scenic Rivers—Proposed' and dated June, 1987, to be administered by the Secretary of Agriculture and the Secretary of the Interior. Commencing after September 30, 1987, there are authorized to be appropriated \$235,000 to implement the provisions of this subsection."

PURPOSE OF THE MEASURE

The purpose of H.R. 317 is to designate approximately 79 miles of the Upper Merced and the entire 43 miles of the South Fork of the Merced River for inclusion in the National Wild and Scenic Rivers System.

BACKGROUND AND NEED

The main stem of the Merced River originates in the 12,000 foot peaks of Yosemite National Park and flows through Yosemite Valley down to Lake McClure Reservoir. After leaving the park, the river runs through the Sierra National Forest and then through lands administered by the Bureau of Land Management. There is very little private land along the river. The main stem of the Merced River offers excellent fishing for its entire length, spectacular scenery in the more wide reaches, and an outstanding and heavily used recreation resource in the areas of easy accessibility.

The South Fork of the Merced River also has its source in Yosemite National Park and flows through the park for about 25 miles before entering national forest lands near the village of Wawona. The river is then within the boundary of the Sierra National Forest until it joins with the main stem downstream.

The Nationwide Rivers Inventory conducted by the Department of the Interior rated the South Fork of the Merced as having more outstandingly remarkable values than any other California river. The upper river is located in a glaciated gorge and has numerous pools and cascades. The lower river falls rapidly through heavily forested areas and has a growing use by rafters, hikers and fishermen. The river has an excellent native trout fishery and contains critical habitat for deer, black bear, cougar, and other wildlife. There are also several rare plant species found along the river.

LEGISLATIVE HISTORY

H.R. 317 passed the House on March 31, 1987. A companion measure, S. 275 was introduced by Senator Wilson and Senator Cranston on January 6, 1987. A hearing was held on both measures in the Senate Public Lands, National Parks and Forests Subcommittee on April 23, 1987.

At a business meeting on June 25, 1987, the Senate Committee on Energy and Natural Resources ordered H.R. 317, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on June 25, 1987, by unanimous vote of a quorum present recommends that the Senate pass H.R. 317, if amended, as described herein.

The rollcall vote on reporting the measure was 18 yeas, 0 nays as follows:

YEAS

Mr. Johnson
 Mr. Bumpers
 Mr. Ford
 Mr. Metzenbaum
 Mr. Bradley*
 Mr. Bingaman
 Mr. Wirth
 Mr. Fowler
 Mr. Conrad*
 Mr. McClure*
 Mr. Hatfield*
 Mr. Weicker*
 Mr. Domenici
 Mr. Wallop
 Mr. Murkowski
 Mr. Nickles*
 Mr. Hecht
 Mr. Evans

NAYS

*Indicates voted by proxy.

COMMITTEE AMENDMENT

During the consideration of H.R. 317, the Committee adopted an amendment in the nature of a substitute. The principal difference between the two versions is that the Committee substitute designates the entirety of the main stem of the Merced River down to Lake McClure as a Wild and Scenic river. The House passed bill protected the lower 8-mile portion of the river for a period of 5 years by subjecting this segment to the provisions of section 7(a) of the Wild and Scenic Rivers Act which, among other things, precludes the licensing of hydroelectric facilities. The House bill did not designate this 8-mile segment as a component of the Wild and Scenic Rivers System.

The substitute also includes a number of technical and conforming amendments, among them a clarification of the western boundary of the main stem of the Merced. The main stem and the South Fork of the Merced River were studied for inclusion in the Wild and Scenic Rivers system through the planning process on the Sierra National Forest. The map included in the draft Sierra National Forest Plan referenced the western boundary of the main stem to be at Lake McClure Reservoir. The Forest Service originally determined that this boundary should be set at an elevation of 850 feet above sea level.

After analyzing a variety of data from the BLM and others, the Forest Service has since concluded that the 850-foot level does not appropriately designate the end of the reservoir and that the mark should be moved upstream about 3 miles to 867 feet elevation. This elevation coincides with an ungated spillway associated with the New Exchequer Dam Project which forms the Lake McClure Reservoir. The map referenced in this bill, "Merced River Wild and Scenic Rivers—Proposed" references the 867-foot mark as the western boundary of the main stem of the Merced.

The Committee does not intend that this legislation will in anyway affect the continued operation and maintenance of the Merced Irrigation District's New Exchequer Project.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 317. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 317, as reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of the Interior setting forth executive agency recommendations relating to H.R. 317 is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, May 13, 1987.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 275, a bill "To amend the Wild and Scenic Rivers Act." S. 275 would designate two segments of the Merced River in California as components of the National Wild and Scenic Rivers System, an 82-mile segment of the main stem and a 43-mile segment of the South Fork.

There is also pending before your Committee H.R. 317, a similar bill, which passed the House of Representatives on March 31. It would designate 74 miles of the main stem and 43 miles of the South Fork as components of the National System.

We strongly support enactment of either S. 275 or H.R. 317, insofar as they would affect National Park Service administration of Yosemite National Park. We defer to the views of the Department of Agriculture with respect to those portions of these river segments that cross National Forest lands.

Both bills would designate 53 miles of the main stem within Yosemite National Park and 4 miles of the main stem within the El Portal administrative site for the park. Both bills would designate 25 miles of the South Fork within Yosemite National Park.

Both the South Fork and the main stem of the Merced rise in Yosemite National Park and flow generally westward out of the park and onto the Sierra National Forest. The South Fork drops from 10,500 feet elevation to 1,400 feet in 43 miles, running through lands that have been designated as wilderness and through a small developed area in the park, Wawona. The gradient is too steep for rafting, but swimmers and waders use the pools in summer, and the South Fork is one of only 16 State-designated Wild Trout Streams.

Although currently there are no hydroelectric projects pending for the South Fork, there have been several proposed in recent years, including a proposed 470-foot-high dam located less than 5 miles from the park boundary that would have affected the fishery and park scenery and wildlife. The effect of S. 275 and H.R. 317 would be to prohibit such projects on both the South Fork and the main stem.

The main stem of the Merced runs through Yosemite Valley in the park and through El Portal administrative site. Appropriate revisions in the General Management Plan for the park and in plans for the administrative site will be made to achieve consistency with Wild and Scenic River status. We note that H.R. 317 provides that revisions in the General Management Plan for the park will suffice for meeting the planning requirements in section 3(b) of the Wild and Scenic Rivers Act. We recommend that similar language be adopted for S. 275. We assume that plans for the administrative site are intended to be included in the reference to plans for the park. Cascade Dam within the park has already been scheduled for removal, and a study is underway to determine management steps to restore and protect the Merced River corridor. Private lands in the Wawona area would not be affected by this designation, since any acquisition or other land protection activities would continue to be governed by the Land Protection Planning process for the park.

The effect of S. 275 and H.R. 317 on the river segments within the park and administrative site would be to assure that the National Park Service will not develop dams or other inappropriate facilities on the designated segments for administrative or visitor use. There is no intention to do so. The bills would also have the effect of prohibiting a pending hydroelectric project on the main stem of the Merced that could have adverse effects on the park and administrative site. We have opposed this project, and this legislation is consistent with our position. The project is a 10-foot high dam and a 12-foot wide diversion tunnel which would dewater a 7-mile stretch of river through El Portal administrative site and beyond. The dam would be built only 500 feet from the National Park boundary.

We note that the Bureau of Land Management (BLM) has some jurisdiction over a 3.5-mile segment of the main stem from the Sierra National Forest boundary to Briceburg. This segment would be included in the Wild and Scenic River designation under both bills. Commercial whitewater rafting from the park boundary downstream is managed by the BLM under an agreement with the Sierra National Forest. We recommend that this continue.

Under section 2 of H.R. 317, the lower main stem of the Merced from Briceburg to Bagby, another 8 miles under BLM jurisdiction, would not be designated as a Wild and Scenic River, but would be protected by a 5-year moratorium on water projects pending further study. S. 275 would designate this segment as a component of the National Wild and Scenic Rivers System. Although we believe this segment qualifies for designation, we would not object to the 5-year protective provision in H.R. 317, since it preserves Congressional options for later designation.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

WILLIAM P. HORN,
Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Act H.R. 317, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

WILD AND SCENIC RIVERS ACT

[16 U.S.C. 1271-1287]

AN ACT To provide a National Wild and Scenic Rivers System, and for other purposes

* * * * *

SEC. 3. (a) The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

(1) * * *

* * * * *

() *MERCED, CALIFORNIA*—The main river from its sources (including Red Peak Fork, Merced Peak Fork, Triple Peak Fork, and Lyell Fork) on the south side of Mount Lyell in Yosemite National Park to Lake McClure, consisting of approximately seventy-nine miles, and the South Fork of the River from its source near Triple Divide Peak in Yosemite National Park to the confluence with the main stem, consisting of approximately forty-three miles, both as generally depicted on the map entitled "Merced River Wild and Scenic Rivers—Proposed" and dated June, 1987, to be administered by the Secretary of Agriculture and the Secretary of the Interior. Commencing after September 30, 1987, there are authorized to be appropriated \$235,000 to implement the provisions of this subsection.

* * * * *

NATIONAL PARK OVERFLIGHTS

JULY 1 (legislative day, JUNE 23), 1987.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 921]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 92) to require the Secretary of the Interior to conduct a study to determine the appropriate minimum altitude for aircraft flying over national park system units, having considered the same, reports, favorably thereon with an amendment to the text and recommends that the Act, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. STUDY OF PARK OVERFLIGHTS.

(a) **STUDY BY PARK SERVICE.**—The Secretary of the Interior (hereinafter referred to as the "Secretary", acting through the Director of the National Park Service, shall conduct a study to determine the proper minimum altitude which should be maintained by aircraft when flying over units of the National Park System. The Secretary of Transportation, acting through the Administrator of the Federal Aviation Administration (hereinafter referred to as the "Administrator", shall provide technical assistance to the Secretary in carrying out the study.

(b) **GENERAL REQUIREMENTS OF STUDY.**—The study shall identify any problems associated with overflight by aircraft of units of the National Park System and shall provide information regarding the types of overflight which may be impacting on park unit resources. The study shall distinguish between the impacts caused by sightseeing aircraft, military aircraft, commercial aviation, general aviation, and other forms of aircraft which affect such units. The study shall identify those park system units, and portions thereof, in which the most serious adverse impacts from aircraft overflight exist.

(c) **SPECIFIC REQUIREMENTS.**—The study under this section shall include research at the following units of the National Park System: Cumberland Island National Seashore, Yosemite National Park, Hawaii Volcanoes National Park, Haleakala National Park, Glacier National Park, and Mount Rushmore National Memorial, and at no less than four additional units of the National Park System, excluding all National Park System units in the State of Alaska. The research at each such unit shall provide information and an evaluation regarding each of the following:

(1) the impacts of aircraft noise on the safety of the park system users, including hikers, rock-climbers, and boaters;

(2) the impairment of visitor enjoyment associated with flights over such units of the National Park System;

(3) other injurious effects of overflights on the natural, historical, and cultural resources for which such units were established; and

(4) the values associated with aircraft flights over such units of the National Park System in terms of visitor enjoyment, the protection of persons or property, search and rescue operations and firefighting.

Such research shall evaluate the impact of overflights by both fixed-wing aircraft and helicopters. The research shall include an evaluation of the differences in noise levels within such units of the National Park System which are associated with flight by commonly used aircraft at different altitudes. The research shall apply only to overflights and shall not apply to landing fields within, or adjacent to, such units.

(d) **REPORT TO CONGRESS.**—The Secretary shall submit a report to the Congress within 3 years after the enactment of this Act containing the results of the study carried out under this section. Such report shall also contain recommendations for legislative and regulatory action which could be taken regarding the information gathered pursuant to paragraphs (1) through (4) of subsection (c). Before submission to the Congress, the Secretary shall provide a draft of the report and recommendations to the Administrator for review. The Administrator shall review such report and recommendations and notify the Secretary of any adverse effects which the implementation of such recommendations would have on the safety of aircraft operations. The Administrator shall consult with the Secretary to resolve issues relating to such adverse effects. The final report shall include a finding by the Administrator that implementation of the recommendations of the Secretary will not have adverse effects on the safety of aircraft operations, or if the Administrator is unable to make such finding, a statement by the Administrator of the reasons he believes the Secretary's recommendations will have an adverse effect on the safety of aircraft operations.

(e) **FAA REVIEW OF RULES.**—The Administrator shall review current rules and regulations pertaining to flights of aircraft over units of the National Park System at which research is conducted under subsection (c) and over any other such units at which such a review is determined necessary by the Administrator or is requested by the Secretary. In the review under this subsection, the Administrator shall determine whether changes are needed in such rules and regulations on the basis of aviation safety. Not later than 180 days after the identification of the units of the National Park System for which research is to be conducted under subsection (c), the Administrator shall submit a report to Congress containing the results of the review along with recommendations for legislative and regulatory action which are needed to implement any such changes.

(f) **AUTHORIZATION.**—There are authorized to be appropriated such sums as may be necessary to carry out the studies and review under this section.

SEC. 2. FLIGHTS OVER YOSEMITE AND HALEAKALA DURING STUDY AND REVIEW.

(a) **YOSEMITE NATIONAL PARK.**—During the study and review periods provided in subsection (c), it shall be unlawful for any fixed wing aircraft or helicopter flying under visual flight rules to fly at an altitude of less than 2,000 feet over the surface of Yosemite National Park. For purposes of this subsection, the term "surface" refers to the highest terrain within the park which is within 2,000 feet laterally of the route of flight and with respect to Yosemite Valley such term refers to the upper-most rim of the valley.

(b) **HALEAKALA NATIONAL PARK.**—During the study and review periods provided in subsection (c), it shall be unlawful for any fixed wing aircraft or helicopter flying under visual flight rules to fly at an altitude below 9,500 feet above mean sea level over the surface of any of the following areas in Haleakala National Park: Haleakala Crater, Crater Cabins, the Scientific Research Reserve, Halemau Trail, Kaupo Gap Trail, or any designated tourist viewpoints.

(c) **STUDY AND REVIEW PERIODS.**—For purposes of subsections (a) and (b), the study period shall be the period of the time after the date of enactment of this Act and prior to the submission of the report under section 1. The review period shall comprise a 2-year period for Congressional review after the submission of the report to Congress.

(d) **EXCEPTIONS.**—The prohibitions contained in subsections (a) and (b) shall not apply to any of the following:

- (1) emergency situations involving the protection of persons or property, including aircraft;
- (2) search and rescue operations;

(3) flights for purposes of firefighting or for required administrative purposes; and

(4) compliance with instructions of an air traffic controller.

(3) **ENFORCEMENT.**—For purposes of enforcement, the prohibitions contained in subsection (a) and (b) shall be treated as requirements established pursuant to section 307 of the Federal Aviation Act of 1958. To provide information to pilots regarding the restrictions established under this Act, the Administrator shall provide public notice of such restrictions in appropriate Federal Aviation Administration publications as soon as practicable after the enactment of this Act.

SEC. 3. GRAND CANYON NATIONAL PARK.

(a) Noise associated with aircraft overflights at the Grand Canyon National Park is causing a significant adverse effect on the natural quiet and experience of the park and current aircraft operations at the Grand Canyon National Park have raised serious concerns regarding public safety, including concerns regarding the safety of park users.

(b) **RECOMMENDATIONS.**—

(a) **SUBMISSION.**—Within 30 days after the enactment of this Act, the Secretary shall submit to the Administrator recommendations regarding actions necessary for the protection of resources in the Grand Canyon from adverse impacts associated with aircraft overflights. The recommendations shall provide for substantial restoration of the natural quiet and experience of the park and protection of public health and safety from adverse effects associated with aircraft overflight. Except as provided in subsection (c), the recommendations shall contain provisions prohibiting the flight of aircraft below the rim of the Canyon, and shall designate flight free zones. Such zones shall be flight free except for purposes of administration and for emergency operations, including those required for the transportation of persons and supplies to and from Supai Village and the lands of the Havasupai Indian Tribe of Arizona. The Administrator, after consultation with the Secretary, shall define the rim of the Canyon in a manner consistent with the purposes of this paragraph.

(2) **IMPLEMENTATION.**—Not later than 90 days after receipt of the recommendations under paragraph (1) and after notice and opportunity for hearing, the Administrator shall prepare and issue a final plan for the management of air traffic in the air space above the Grand Canyon. The plan shall, by appropriate regulation, implement the recommendations of the Secretary without change unless the Administrator determines that implementing the recommendations would adversely affect aviation safety. If the Administrator determines that implementing the recommendations would adversely affect aviation safety, he shall, not later than 60 days after making such determination, in consultation with the Secretary and after notice and opportunity for hearing, review the recommendations consistent with the requirements of paragraph (1) to eliminate the adverse effects on aviation safety and issue regulations implementing the revised recommendations in the plan. In addition to the Administrator's authority to implement such regulations under the Federal Aviation Act of 1958, the Secretary may enforce the appropriate requirements of the plan under such rules and regulations applicable to the units of the National Park System as he deems appropriate.

(3) **REPORT.**—Within 2 years after the effective date of the plan required by subsection (b)(2), the Secretary shall submit to the Congress a report discussing—

(A) whether the plan has succeeded in substantially restoring the natural quiet in the park; and

(B) such other matters, including possible revisions in the plan, as may be of interest.

The report shall include comments by the Administrator regarding the effect of the plan's implementation on aircraft safety.

(c) **HELICOPTER FLIGHTS OF RIVER RUNNERS.**—Subsection (b) shall not prohibit the flight of helicopters

(1) which fly a direct route between a point on the north rim outside of the Grand Canyon National Park and locations on the Hualapai Indian Reservation (as designated by the Tribe); and

(2) whose sole purpose is transporting individuals to or from boat trips on the Colorado River and any guide of such a trip.

SEC. 4. The Administrator shall conduct surveillance of aircraft flights over the Boundary Waters Canoe Area Wilderness as authorized by the Act of October 21, 1978 (92 Stat. 1649-1659) for a period of not less than 180 days beginning within 60

days of enactment of this Act. In addition to any actions the Administrator may take as a result of such surveillance, he shall provide a report to the Committee on Interior and Insular Affairs and the Committee on Public Works and Transportation of the United States House of Representatives and to the Committee on Energy and Natural Resources and the Committee on Commerce, Science, and Transportation of the United States Senate. Such report is to be submitted within 30 days of completion of the surveillance activities. Such report shall include but not necessarily be limited to information on the type and frequency of aircraft using the airspace over the Boundary Waters Canoe Area Wilderness.

SEC. 5. ASSESSMENT OF NATIONAL FOREST SYSTEM WILDERNESS OVERFLIGHTS.

(a) **ASSESSMENT BY FOREST SERVICE.**—The Chief of the Forest Service (hereinafter referred to as the "Chief") shall conduct an assessment to determine what, if any, adverse impacts to wilderness resources are associated with overflights of National Forest System wilderness areas. The Administrator of the Federal Aviation Administration shall provide technical assistance to the Chief in carrying out the assessment. Such assessment shall apply only to overflight of wilderness areas and shall not apply to aircraft flights or landings adjacent to National Forest System wilderness units. The assessment shall not apply to any National Forest System wilderness units in the State of Alaska.

(b) **REPORT TO CONGRESS.**—The Chief shall submit a report to Congress within 2 years after enactment of this Act containing the results of the assessments carried out under this section.

(c) **AUTHORIZATION.**—Effective October 1, 1987, there are authorized to be appropriated such sums as may be necessary to carry out the assessment under this section.

SEC. 6. CONSULTATION WITH FEDERAL AGENCIES.

In conducting the study and the assessment required by this Act, the Secretary of the Interior and the Chief of the Forest Service shall consult with other Federal agencies that are engaged in an analysis of the impacts of aircraft overflights over federally-owned land.

PURPOSE OF THE MEASURE

The primary purposes of H.R. 921 are to (1) require the Secretary of the Interior to conduct a study to determine the proper minimum altitude that should be maintained while flying over the various units of the national Park System; (2) to set specific limitations on flights over Yosemite and Haleakala National Parks during the study and a congressional review period; and (3) set specific limitations and statutory direction for flights over Grand Canyon National Park.

BACKGROUND AND NEED

Over the last several years, a controversy has been emerging over aircraft flights at low elevation above certain units of the National Parks System. While numerous complaints are received each year from park users offended by noise intrusion of aircraft or expressing concern over the safety of rock climbers, horseback riders and other park users, there has been no systematic study of the park system to determine how widespread and how severe the problem is. Neither has there been any systematic study of the noise levels of different types of aircraft flying at different elevations.

An area of particular concern has been Grand Canyon National Park. On April 27, 1987, a Special Federal Aviation Regulation (SFAR) went into effect. This SFAR established temporary procedures for the operation of all aircraft in the airspace above the Grand Canyon up to an altitude of 9,000 feet above mean sea level. On June 15, 1987, the FAA issued final rules regarding the oper-

ation of aircraft in this area. These regulations are effective until June 15, 1992. As noted above, these regulations apply only to the Grand Canyon.

LEGISLATIVE HISTORY

H.R. 921 passed the House of Representatives on May 4, 1987. A similar bill, S. 451 was introduced by Senator Matsunaga and Senator McCain on February 3, 1987. Hearings on both measures were held in the Senate Public Lands, National Parks and Forests Subcommittee on May 7, 1987.

At a business meeting on June 25, 1987, the Senate Committee on Energy and Natural Resources ordered H.R. 921, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on June 25, 1987, by a unanimous vote of a quorum present recommends that the Senate pass H.R. 921 if amended, as described herein.

The rollcall vote on reporting the measure was 18 yeas, 0 nays as follows:

YEAS

Mr. Johnston
Mr. Bumpers
Mr. Ford
Mr. Metzenbaum*
Mr. Bradley*
Mr. Bingaman
Mr. Wirth
Mr. Fowler
Mr. Conrad*
Mr. McClure*
Mr. Hatfield*
Mr. Weicker*
Mr. Domenici
Mr. Wallop
Mr. Murkowski
Mr. Nickles*
Mr. Hecht
Mr. Evans

NAYS

*Indicates voted by proxy.

COMMITTEE AMENDMENT

During the consideration of H.R. 921, the Committee adopted an amendment in the nature of a substitute. The substitute includes a number of technical and conforming amendments and makes four substantive changes in the House-passed measure. A discussion of those substantive differences follows. Additional information on the substitute amendment is included in the "Section-by-Section Analysis" of this report.

1. Park Units Covered by the Study

As passed by the House, H.R. 921 directed the Secretary to study the overflight problem at certain specifically listed parks and no more than four additional park units to be selected by the Secretary. In order to ensure that an adequate data base is prepared, the substitute provides for potential study of not less than four additional areas.

In a related matter, as passed the House H.R. 921 exempted those units of the National Park System established by section 201 of the Alaska National Interest Lands Conservation Act (ANILCA) from the study provision outlined above. The Committee substitute expands this exemption to include those units of the park system existing in Alaska prior to the enactment of ANILCA—Glacier Bay National Monument, Katmai National Monument, and Mount McKinley National Park.

2. Definition of the "Rim" of the Grand Canyon

Both the House-passed bill and the Committee substitute prohibit, with some exceptions, aircraft flights "below the rim" of the Grand Canyon National Park. The substitute amendment, unlike the House bill, includes a provision directing the FAA, in consultation with the Secretary of the Interior, to define the rim of the Canyon. This language was added in recognition of the fact the deliniation of that area needs to be made taking into account the varying rim levels of the Canyon and the potential impact of this provision on flight activities and operations. The FAA seems best suited to make that determination.

3. Assessment of Impacts on Units of the National Wilderness Preservation System in National Forests

The substitute includes a provision, not found in the House bill, directing the Secretary of the Agriculture to conduct an assessment to determine what, if any, adverse impacts to wilderness resources are associated with overflights of the National Forest System wilderness areas.

This assessment is to identify problems associated with overflight by aircraft of wilderness areas of the National Forest System. It shall provide information regarding the types of overflight which may be impacting wilderness resources, including: sightseeing aircraft, military aircraft, commercial aviation, general aviation, and other forms of aircraft. It shall include an assessment of both fixed-wing aircraft and helicopters. The assessment shall identify those wilderness areas, and portions thereof, in which the most serious adverse impacts from aircraft overflight exist. Included in the assessment shall be an evaluation of the differences in noise levels associated with flights of commonly used aircraft at different altitudes. The assessment shall also include specific information and evaluation of the following:

- (1) The impacts of aircraft overflights, particularly aircraft noise, on the safety of National Forest System employees and wilderness users including hikers, climbers, outfitters, summer and winter recreationists, and boaters;

(2) The impacts of aircraft overflights on visitor enjoyment, including the pursuit of quiet and solitude;

(3) Other injurious effects of aircraft overflights, including impacts on wildlife and endangered species;

(4) The values of aircraft flights over National Forest System wilderness areas in terms of visitor enjoyment, the protection of persons or property, law enforcement, search and rescue operations, and firefighting.

The assessment applies only to overflight of wilderness areas and shall not apply to aircraft flights or landings adjacent to National Forest System wilderness units. The assessment shall not apply to any National Forest System wilderness units in the State of Alaska.

It is the Committee's understanding that the Forest Service will select a sample of wilderness areas in which to conduct the assessment. It is clearly not the Committee's intention that all wilderness areas administered by the Forest Service be included in the study.

4. Preparation of an Aircraft Management Plan for the Grand Canyon

H.R. 921 as passed the House provided for the Secretary of the Interior to prepare an air traffic management plan for the airspace above the Grand Canyon. Although the language of the House bill and the report accompanying the measure make it clear that any such plan would be implemented by the FAA and could be modified by that agency so as not to adversely affect safety, the Committee was concerned about the language directing the Park Service to prepare an air traffic management plan for the park.

The Committee substitute modifies this language to make it clear that the FAA prepares the air traffic management plan and retains its authority to regulate the airspace over the park. However, it also makes it clear the Park Service is to make recommendations to the FAA regarding those issues the Park Service has expertise in such as measures necessary to substantially restore the natural quiet of the Canyon, the delineation of flight free zones, identification of adverse impacts on park resources and visitors, etc. These Park Service recommendations are to be included in the plan, without change, unless the FAA finds that such recommendations would have an adverse impact on safety.

The Committee feels that this language protects the appropriate jurisdiction of each agency and will facilitate the purposes of the measure.

SECTION-BY-SECTION ANALYSIS

Section 1(a) directs the Secretary of the Interior, acting through the Director of the National Park Service, to conduct a study to determine the proper minimum altitude that should be maintained while flying over various units of the National Park System. The Federal Aviation Administration is required to provide assistance.

Section 1(b) set forth specific requirements for the service wide study.

Section 1(c) requires a more thorough research program, as part of the study, be conducted at six named units of the National Park System and no less than four additional units selected by the Secretary. The language sets forth specific objectives of the study and requires that the research be directed to overflights and not to airfields or landing areas within or adjacent to park units. The study is not to consider units of the park system located in the State of Alaska.

Section 1(d) requires the study be submitted to the Congress within 3 years after review and comment by the Administrator of the Federal Aviation Administration with respect to the safety of aircraft operations. The final report must include a finding by the Administrator that the implementation of the recommendations would not have adverse effects upon the safety of aircraft operations or include a statement that sets forth the reasons the Administrator feels that any recommendation might cause a problem.

The Committee notes that the study of aircraft overflights at Grand Canyon National Park, which is now in its final stages, was required by Congressional action in 1975. The Committee urges the National Park Service to draw upon its experience at Grand Canyon and expects the Secretary of the Interior to request study funds as soon as practicable so this study may be completed within the time limit proscribed by the Congress.

Section 1(e) requires the Administrator to review existing rules and regulations affecting overflights of park system units to determine if changes are necessary on the basis of aircraft safety. The report is to be submitted to the Congress within 6 months of the identification of the units selected for detailed research.

Section 1(f) authorizes appropriations for the studies.

Section 2(a) requires that aircraft fly at least 2,000 feet above the ground surface (under visual flight rules) at Yosemite National Park, including 2,000 feet above the elevation of the uppermost rim of Yosemite Valley. The restriction applies during the time of the study and study review period.

Section 2(b) requires that aircraft fly at or above 9,500 feet elevation (under visual flight rules) over the crater and other named areas at Haleakala National Park. This restriction also applies during the time of the study and review period.

Section 2(c) defines the study and study review period as the time period prior to submission of the report to Congress and 2 years thereafter.

Section 2(d) makes exceptions to the restrictions in these parks related to situations of public health and safety, protection of property, firefighting, compliance with instructions from an airtraffic controller and for administrative purposes.

Section 2(e) places the requirement for enforcement of the restrictions upon the Federal Aviation Administration.

Section 3(a) sets forth a finding of problems with aircraft overflights at Grand Canyon National Park.

Section 3(b) requires that the Secretary shall submit recommendations to the Administrator within 30 days of enactment that will provide for substantial restoration of the natural quiet at Grand Canyon National Park and provide for protection of public health and safety from adverse effects associated with aircraft overflights,

including a requirement barring aircraft flights below the rim of the Grand Canyon and the designation of flight free zones.

The rim of the Canyon is to be defined by the Administrator of the FAA in consultation with the Secretary in a manner that constitutes a practical flight reference for pilots while meeting the objective of substantially restoring the natural quiet of the Canyon. These recommendations are to be incorporated into an air traffic management plan for the airspace above the Grand Canyon to be prepared by the Administrator. The Administrator is directed to review those recommendations for any adverse impacts on aviation safety. A process for reconciliation between recommendations to protect the park and protection of aircraft safety is set forth.

The Federal Aviation Administrator is required to issue and enforce regulations to implement the plan including the Secretary's recommendation. The Director of the National Park Service is required to use his existing authorities to aid in accomplishing the objectives of the plan. A report to the Congress is required 2 years after implementation of the plan.

The Committee does not intend that this legislation would give the Director any authority to enforce Federal Aviation Administration regulations.

Section 3(c) permits continued helicopter operations below the rim of the Canyon for the sole purpose of transporting river runners between the landing strips on the north rim and the landing pads on the Hualapai Indian Reservation. The Committee recognizes the need to continue those operations since other means of transportation are infeasible.

Section 4 requires the FAA to monitor flights over the Boundary Waters Canoe Area Wilderness including the Boundary Water Canoe Area Mining Protection Area and report its findings to the affected Committees.

Section 5(a) provides for the Secretary of the Agriculture to conduct a study on the impact of aircraft overflights upon units of the Wilderness Preservation System under his jurisdiction. This study is similar to the one required for park units.

Section 5(b) mandates a report to Congress within 2 years containing the results of this assessment. Unlike the assessment for units of the National Park System, there is no requirement that the assessment include recommendations to the Congress for legislative or regulatory changes as a result of the study.

Section 5(c) authorizes the sums necessary to carry out the assessment.

Section 6 ensures that the Secretaries of the Interior and Agriculture, during the preparation of their assessments, will consult with other Federal agencies, including the Department of Defense, that may be engaged in similar analyses on the impact of aircraft overflights on Federal lands used for recreation, wildlife enhancement, etc.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will

request it to be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 921. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 921, as reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of the Interior setting forth executive agency recommendations on S. 451, the Senate companion bill is set forth below:

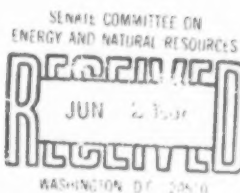


United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

May 29, 1987

Honorable J. Bennett Johnston
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510



Dear Mr. Chairman:

This responds to your request for our views on S. 451, a bill "To require the Secretary of the Interior to conduct a study to determine the appropriate minimum altitude for aircraft flying over National Park System units."

We recommend against the enactment of S. 451. We believe this legislation is unnecessary. We do not need special authority to conduct minimum aircraft altitude studies, where appropriate. For example, we are now undertaking a comprehensive noise study at Grand Canyon National Park, and the Federal Aviation Administration (FAA) will be providing technical assistance in this study. Furthermore, the mandated study in S. 451 would cost in excess of \$3 million.

S. 451 would direct the Secretary of the Interior, acting through the Director of the National Park Service, to conduct a study and report the results to Congress within three years to determine the proper minimum altitude which should be maintained by aircraft when flying over units of the National Park System. Although the study is to apply to all units of the System, the bill would require that the study include special research at 10 parks, except those established by the Alaska National Interest Lands Conservation Act.

The bill further would prohibit aircraft from flying less than 2,000 feet above the highest terrain in Yosemite National Park and prohibit aircraft from flying below 9,500 feet above mean sea level over certain sections of Haleakala National Park. The prohibitions would remain in effect for two years after the study is submitted to Congress.

For Grand Canyon National Park, the bill would require the National Park Service to submit a plan for the management of air space above the park to the Administrator of FAA within

30 days of enactment. Within 60 days of receiving the plan, the Administrator would be required to issue regulations implementing the recommendations in the National Park Service plan. Provisions are included for revisions in the regulations based on aviation safety. A report to Congress would be required within two years on whether the National Park Service plan has succeeded in substantially restoring the natural quiet in the park. Helicopters transporting Colorado River boat trip parties to and from the Hualapai Indian Reservation would not be prohibited.

Our chief objections to the bill are that it would cost in excess of \$3 million to conduct the study, and that it would place the National Park Service (at Grand Canyon National Park) in the position of planning and managing aircraft space, more properly the duty of the FAA, the primary agency with such expertise. Further, the bill would prohibit flights below certain altitudes at Haleakala and Yosemite even if studies show the minimum altitudes are not needed. As the bill reads now, the prohibitions would continue for two years after the studies are submitted even if the study indicated that minimum altitudes are not needed. The prohibitions would continue for as long as it takes to complete the study, plus two years.

We do not need legislation to address the issue of aircraft overflights. We have requested our field offices to consider using some of the \$15 million made available in the fiscal year 1987 Continuing Resolution for studies of the effects, if any, of overflights on visitors and resources.

For Grand Canyon, we are currently in the process of developing additional data on suspected noise impacts caused by aircraft, including commercial tour operators. We have proposed a two-year joint study with FAA of noise impacts. We have also recommended to FAA that radar be installed at Grand Canyon airport and that no flights be allowed within the inner gorge. FAA issued a notice of proposed rulemaking on December 9, 1986, and recently issued a temporary rule placing the regulation into effect on an interim basis until June 15, 1987, proposing to restrict flights over the park below 9,000 feet mean sea level, except as authorized by the Las Vegas Flight Standards Office. The regulation would have minimal effect on commercial tour operators currently overflying the park. We generally support the intent of the proposed regulation as it pertains to reducing noise and safety hazards.

In summary, FAA is proceeding under its existing regulatory authority, and we are beginning an extended study of the effects of aircraft noise at Grand Canyon. Since we are

unable to make management decisions or recommendations related to noise without additional data, we would be unable to comply with this bill's requirement that we recommend a plan within 30 days that provides for substantial restoration of the natural quiet and experience of the park.

We recognize that noise is an aesthetic problem for some visitors to Grand Canyon. We want to provide a quality experience to our visitors. Accordingly, we recommend that overflights not be prohibited entirely, since they are very popular and they provide a park experience for those who may not be able, or may not wish, to see the park from the ground. At the same time, some restriction on overflights is appropriate to offer other visitors what they seek.

We believe that time and space zoning should be considered in order to accommodate both sets of interests. However, such zoning must be based on solid information, and that is why we are undertaking the comprehensive noise study. An additional point to be considered is that one of the principal means of access to the Navasupai Reservation, which is in the canyon itself, is by aircraft. The Navasupai have not been addressed in the bill.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,


DEPUTY ASSISTANT SECRETARY Susan Recce

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the Act H.R. 921, as reported.

○